IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.02.2006

Coram :

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN

AND

THE HONOURABLE MR.JUSTICE P.P.S.JANARTHANA RAJA

Tax Case (Appeal) No.463 of 2004

Commissioner of Income Tax-I,
Chennai. ..Appellant

Vs

M/s.Upasana Finance Limited,
96/1, Luz Church Road,
Mylapore, Chennai-600 004. ..Respondent
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Appeals under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras, 'B' Bench dated 04.12.2003 in I.T.A. No.1141/Mds/97 for the assessment year 1993-94. against the order of Commissioner of Income Tax (Appeals IV) Madras dated 28.02.1997 and made in IT/WT/GT/Appeal No. ITA 52/96-97. against the order of the Deputy Commissioner of Income Tax Special Range XI, Madras 600 034 dated 28.02.1996 and made in PAN/GIR NO. 47-081/CQ-5987

For Appellant : Mrs.Pushya Sitaraman
For Respondent : Mr.D.S.Suman

JUDGMENT

(Judgment of the Court was delivered by P.P.S.Janarthana Raja, J.)

The present appeal is filed under Section 260A of the Income Tax Act, 1961 by the Revenue, in I.T.A. No.1141/Mds/97, passed by the Income Tax Appellate Tribunal, Madras, 'B' Bench raising the following substantial question of law.

> "Whether in the facts and circumstances of the case, the Tribunal was right in allowing 100% depreciation on printing cylinders, sintex sipper ice box, ms

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bins which does not serve any purpose individually?"

2. The brief facts leading to the above question of law are as under:

i) The assessee is engaged in the business of hire purchase, finance and leasing etc. The Return of the company's income was filed on 30.12.1993. During the course of the assessment under Section 143(3), the Assessing Officer disallowed the depreciation which was claimed by the assessee at the rate of 100% on printing cylinders, MS bins and Shipper Sintex Ice Boxes under first proviso to Section 32(1) of the Act, by giving the reason that the assessee was a leasing company and had leased the assets in bulk .

ii) Aggrieved by the order of the above, the assessee filed an appeal before the first appellate authority. The first appellate authority held that, each one of the printing cylinders, MS bins and Shipper Sintex Ice Boxes was a plant and was qualified for 100% depreciation. Aggrieved by the order, the Revenue filed an appeal before the Income Tax Appellate Tribunal. The Income Tax Appellate Tribunal dismissed the Revenue's appeal and held that the assessee was entitled for 100% depreciation on the said item. The learned counsel appearing for the Revenue submitted that the assessee had leased the assets in bulk and not single item-wise, and hence, the depreciation of 100% was not allowable. The counsel for the respondent submitted that the assessee is entitled for 100% depreciation on the ground that each piece of asset costs less than Rs.5,000/-

3. We heard the learned counsel. It was found by the Tribunal that the cost of each asset was not higher than Rs.5,000/-. The printing cylinders are mainly used in the printing industry and the matter to be printed are screwed on to these cylinders and then prints are taken. Therefore these printing cylinders were being used as part of the plant. The MS bins are being used as individual item and each one of them is a plant as a single unit. The same is the case for Shippers Sintex Ice Boxes, as Shippers Sintex Ice Boxes are of different capacities and are used individually as per the requirements. So, each of these assets is a plant. In the case of First Leasing Co. of India Limited Vs. C.I.T., reported in 244 ITR 238, it is held that "each bottle was an independent unit and was not dependent for its user on the availability of other bottles whether empty or filled. The use of one bottle was not

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interconnected with the use of another bottles. Since each bottle was an individual unit and all bottles together did not constitute a single integrated unit, depreciation under the proviso to Section 32(1) (ii) of the Act was allowable." Another Division Bench of this Court had considered the above judgment and held the same view, in the case of C.I.T. Vs. Alagendran Finance Ltd reported in 264 ITR 269. So, we are of the view that depreciation of 100% on printing cylinders, MS bins and Shippers Sintex Ice Boxes are eligible under the first proviso to Section 32(1) (ii) of the Act, and each of these assets is a plant individually.

4. In the foregoing conclusions, we find no error in the order of the Income Tax Appellate Tribunal and requires no interference. Accordingly, the above tax case is dismissed. No costs.

km

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

tO
The Assistant Registrar,
Income Tax Appellate Tribunal
IIIrd Floor, Rajaji bhavan
Besant Nagar, Madras 600 090.

2. The Commissioner of Income Tax - I
Chennai - 34

3. The Commissioner of Income Tax (Appeals) - IV
Madras 34

4. The Deputy Commissioner of Income-Tax, Special Range XI
Madras 600 034.

+ one cc to M/s. Pushya Sitaraman, Advo ate sr no 5115
+ one cc to Mr. P.S. Suman, Advocate sr no. 4996

PV(CO)
NM(13.03.2006)

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